

SERVICE DATE – SEPTEMBER 22, 2016

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE SCHEDULING ORAL
ARGUMENTS ON A MOTION TO COMPEL DISCOVERY

Docket No. NOR 42144

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL &
PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE
FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS,
LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; AND CARGILL
INCORPORATED v. UNION PACIFIC RAILROAD COMPANY

Decided: September 21, 2016

On June 2, 2015, North America Freight Car Association, American Fuel & Petrochemicals Manufacturers, The Chlorine Institute, Inc., The Fertilizer Institute, and American Chemistry Council, along with Ethanol Products, LLC d/b/a POET Ethanol Products, POET Nutrition, Inc., and Cargill Incorporated (collectively, Complainants), filed an amended complaint against Union Pacific Railroad Company (UP) pursuant to 49 U.S.C. §§ 10702, 11101, 11121, 11122, 11701, and 11704, and 49 C.F.R. pt. 1111. In Count I, Complainants challenge the reasonableness of UP Tariff 6004, Item 55-C (Item 55-C), which became effective on January 1, 2015. In Count II, Complainants allege that UP's refusal to compensate Complainants for the use of their tanks cars, whether through mileage allowances or reduced line haul rates, constitutes an unreasonable practice under 49 U.S.C. § 10702 and violates 49 U.S.C. §§ 11101, 11121, and 11122. On June 22, 2015, UP filed its answer to the amended complaint.

By a decision served on February 11, 2016, the Board assigned and authorized Administrative Law Judge John P. Dring of the Federal Energy Regulatory Commission to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in this proceeding. A discovery conference on outstanding discovery matters, and a follow-up status conference took place on June 23, 2016, and August 22, 2016, respectively. Oral arguments to decide UP's petitions for subpoenas took place on September 20, 2016. Oral arguments on a pending motion to compel are hereby scheduled below. Any questions pertaining to this proceeding should be directed to Judge Dring's law clerk, Carlos E. Clemente, who may be contacted at (202) 502-8392 or Carlos.Clemente@ferc.gov.

It is ordered:

1. Oral arguments on UP's motion to compel discovery addressed to Cargill Incorporated, Ethanol Products, LLC d/b/a POET Ethanol Products, and POET Nutrition, Inc., are scheduled for September 29, 2016, at 10:00 a.m. in a hearing room to be designated at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. This conference will be held on the record.

2. This decision is effective on its date of service.

By the Board, John P. Dring, Administrative Law Judge.